

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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IN RE:

MIDAMERICAN ENERGY COMPANY

DOCKET NO. GCU-02-1

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**FINAL DECISION AND ORDER**

(Issued January 23, 2003)

**I. STATEMENT OF THE CASE**

On August 14, 2002, MidAmerican Energy Company (MidAmerican), on behalf of itself and as agent for 14 joint owners, filed with the Utilities Board (Board) an application pursuant to Iowa Code chapter 476A for a generating facility certificate to construct and operate a 750 MW coal-fired electric generating facility. The proposed facility is called the Council Bluffs Energy Center Unit 4 (CBEC-4) and is located at MidAmerican's existing Council Bluffs Energy Center in Council Bluffs, Iowa. MidAmerican held the informational meeting required by 199 IAC 24.7 on May 15, 2002. Proof of publication of the notice of the informational meeting was filed on May 20, 2002.

On September 12, 2002, MidAmerican filed additional information, including a copy of the joint ownership agreement for CBEC-4 and documents related to a vote by the design review subcommittee of the Mid-Continent Area Power Pool (MAPP) approving CBEC-4's interconnection to the area transmission system. MidAmerican

filed further information on October 2, 2002, and November 8, 2002, including a copy of an amendment to the joint ownership agreement adding another joint owner and a copy of the prevention of significant deterioration permit application submitted to the Iowa Department of Natural Resources (IDNR).

The Board accepted MidAmerican's application and established a procedural schedule by order issued September 26, 2002. Notice of the filing was mailed to all owners and lessees of real property located within 1,000 linear feet of the proposed site pursuant to Iowa Code § 476A.4(2)"c" (2001 Supp.), as listed in MidAmerican's application. In accordance with § 476A.4(3), notice was published and proof of publication filed.

MidAmerican filed the testimony of five witnesses with its application. On November 15, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a statement in lieu of testimony. Consumer Advocate said it did not object to the issuance of a generating facility certificate to MidAmerican and the other joint owners if the following conditions are included in any Board order granting permission to construct CBEC-4:

1. MidAmerican and the other joint owners of CBEC-4 shall receive all appropriate transmission interconnection, transmission service and other transmission related authorizations currently and prospectively to operate CBEC-4 on the transmission system. These terms and conditions are not meant to prejudice the Joint Owners' rights to pursue the remedies available to them in resolving issues with the appropriate transmission authorities.
2. MidAmerican and other Joint Owners have filed with the Board evidence that as of this date MAPP's

Design Review Committee, the appropriate MAPP authority, has approved the interconnection of CBEC-4 to the regional transmission system and has also approved transmission service for CBEC-4 required by MidAmerican and the other Joint Owners for transmission service across the MidAmerican transmission system.

There are no other intervenors in this proceeding.

On November 26, 2002, MidAmerican filed a motion to cancel the hearing scheduled for January 28, 2003. In its motion, MidAmerican said it had agreed to stipulate to Consumer Advocate's conditions. There were no objections to the motion, and on December 19, 2002, the Board issued an order canceling the hearing, because no one had questions on cross-examination for MidAmerican's witnesses. The order also set a briefing schedule. MidAmerican filed a brief on January 6, 2003. In its cover letter accompanying the brief, MidAmerican said it waived the right to file a reply brief since Consumer Advocate, the other party to this proceeding, was not filing an initial brief.

## **II. DISCUSSION OF THE EVIDENCE**

The proposed CBEC-4 will be an approximately 750 MW coal-fired generating facility. The facility will be built at MidAmerican's Council Bluffs Energy Center in Council Bluffs, Iowa. The facility will use highly efficient, supercritical steam boiler technology to generate electricity. Site preparation activities are scheduled to begin in June 2003, with a planned in-service date of June 2007. The plant is expected to operate between 6,900 and 8,500 hours per year, but will have the capability of running 24 hours per day, seven days a week. (Alexander Testimony, p. 15).

MidAmerican's filing maintains that CBEC-4 and certain transmission additions that are planned by the Joint Owners as part of the project will provide positive benefits to MidAmerican's and the Joint Owners' customers. The five primary benefits are: 1) adding approximately 750 MW of needed generating capacity to meet the growing energy demands of the Joint Owners' customers, of which approximately 600 MW will be used to meet the growing energy demands of Iowa consumers; 2) relieving transmission constraints in and around Iowa; 3) improving transmission reliability in the Des Moines and Council Bluffs areas; 4) providing voltage support to the transmission system; and 5) providing additional transmission facilities for a reliable transmission system for the future. (Application, Sections 1.5.1 and 5.0; Table 1.5-1; Stevens testimony, pp. 3-17). The planned transmission additions will be addressed in future E-docket filings before the Board. In those dockets, the Board will address the statutory criteria found in Iowa Code chapter 478, which deals with franchises for electric transmission lines.

MidAmerican also points out the economic benefits provided by CBEC-4. During the peak construction period, MidAmerican said the project would generate more than 1,000 jobs, approximately \$100 million in local expenditures, and a construction payroll of approximately \$300 million. When fully operational, the plant will have up to 77 full-time employees with an estimated payroll of \$4.8 million. The plant will provide approximately \$3.4 million in new tax revenue along with an unknown added amount of tax revenues for the associated transmission facilities to be constructed. There will be an estimated \$3 million per year in local expenditures.

(Alexander testimony, pp. 4-5; 20). No testimony or other evidence was filed refuting the allegations MidAmerican made in its application and accompanying testimony.

### **III. ANALYSIS**

Iowa Code chapter 476A is the applicable chapter dealing with electric power generating certificates. 2001 Iowa Acts, House File 577, significantly amended this chapter. Among other things, House File 577 changed the decision criteria the Board examines in a certification or siting proceeding.

Prior to the enactment of House File 577, § 476A.6 listed six criteria for the Board to examine in determining whether to issue a generating certificate. Three of the criteria only applied to public utilities. These three criteria were whether a public utility had 1) a comprehensive energy management plan, 2) considered sources of supply from either purchase of electricity or investment in facilities owned by others, and 3) considered all feasible alternatives to the proposed facility including nongeneration alternatives.

The other three criteria applied to all applicants. The first criterion was that the proposed facility is required by the present or future public convenience, use, and necessity. The second criterion was that the applicant was willing to abide by the terms of the certificate. The final criterion applying to all applicants was that the proposed facility would cause minimum land use, environmental, and aesthetic impact.

House File 577 eliminated the criteria applying only to public utilities and modified the criteria applicable to all applicants. Now, there are three decision criteria and those criteria apply to both to public utility and non-public utility applicants:

1. The services and operations resulting from the construction of the facility are consistent with legislative intent as expressed in section 476.53 and the economic development policy of the state as expressed in Title I, subtitle 5, and will not be detrimental to the provision of adequate and reliable electric service.
2. The applicant is willing to construct, maintain, and operate the facility pursuant to the provisions of the certificate and this subchapter.
3. The construction, maintenance, and operation of the facility will be consistent with reasonable land use and environmental policies and consonant with reasonable utilization of air, land, and water resources, considering available technology and the economics of available alternatives.

The first criterion provides for the Board to examine three things, legislative intent expressed in § 476.53, economic development policy as expressed in Title I, Subtitle 5, and whether the facility will be detrimental to the provision of adequate and reliable electric service. The proposed facility is consistent with the legislative intent expressed in § 476.53. This section provides, in part, that:

It is the intent of the general assembly to attract the development of electric power generating and transmission facilities within the state in sufficient quantity to ensure reliable electric service to Iowa consumers and provide economic benefits to the state.

CBEC-4 will make a significant contribution to economic development. Not only is the provision of adequate and reliable electric service a key component of the state's infrastructure and the state's ability to attract new business and industry, but also CBEC-4 will generate over 1,000 jobs at the peak of construction as well as provide permanent employment and tax revenue. MidAmerican has established that construction and operation of the facility is consistent with the economic development policy of the state.

MidAmerican has also established that the proposed facility will not be detrimental to the provision of adequate and reliable electric service. The facility, along with the planned transmission additions, adds significant generation to meet the growing needs of MidAmerican and the other Joint Owners. In addition, this new generation and planned transmission additions will increase reliability in the Council Bluffs and Des Moines areas, relieve some transmission constraints in and near Iowa, and provide voltage support to the transmission system.

The most important determination for the Board to make under the first criterion will be the impact of the generation facility on area transmission facilities. In August 27, 2002, the MAPP Design Review Subcommittee (DRS) unanimously approved the interconnection of CBEC-4 to the transmission system and transmission service across the MidAmerican system contingent upon certain transmission improvements discussed at the DRS August 27, 2002, meeting. No further MAPP approval for CBEC-4's interconnection is required. (Stevens testimony, pp. 3-16). In addition, Consumer Advocate's November 15, 2002,

conditions, which were accepted by MidAmerican, ensure that the facility will not be operated until appropriate transmission authorizations are obtained. MidAmerican has satisfied the first criterion.

MidAmerican has consistently expressed its willingness to comply with the provisions of a certificate and the requirements of Chapter 476A. MidAmerican's assertions were not challenged and, therefore, MidAmerican has satisfied the second statutory criteria. (Alexander testimony, p. 20).

The third criterion deals with land use and environmental impacts. The proposed addition is being constructed on land owned by MidAmerican and is the site of the Council Bluffs Energy Center. As an existing power plant site, it is not considered an open space by MidAmerican and is appropriate for industrial use. Using an existing industrial site minimizes construction and operational impacts. For example, an existing Council Bluffs Energy Center wastewater discharge outfall structure will be utilized by CBEC-4. (Guyer testimony, pp. 10-11). MidAmerican states that prior environmental studies and investigations at the proposed site have confirmed that the construction and operation of CBEC-4 will not impact any habitats. (Guyer testimony, pp. 6-7).

The environmental portion of the third criterion is similar to that under the prior law. With respect to environmental matters, the Board has traditionally deferred to the IDNR and found that issuance of applicable air quality, wastewater, and other necessary environmental permits by the IDNR establishes compliance with this criteria. MidAmerican has applied for the appropriate pre-construction permits from



the IDNR. However, because all appropriate pre-construction permits have not been issued, a generating certificate cannot be issued. Iowa Code § 476A.5(1).

Therefore, only a conditional finding of compliance with the third criterion can be made. A certificate for the generating unit will not be issued until MidAmerican notifies the Executive Secretary of the Board that all appropriate pre-construction permits have been issued. No additional hearing is required and the Board will issue the actual generating certificate subsequent to this notification.

MidAmerican has assured the Board throughout its filing and brief that it will meet all permit and licensing requirements of the various regulatory agencies that have jurisdiction over the construction, maintenance, and operation of CBEC-4. (Alexander testimony, p. 21). MidAmerican also stated it would not begin construction or operation of CBEC-4 without first obtaining the necessary permits and approvals. (Guyer testimony, p. 5). Advance site preparation work, however, can commence immediately with the issuance of this decision. Iowa Code § 476A.9.

#### **IV. FINDINGS OF FACT**

1. Subject to the conditions agreed to by MidAmerican and Consumer Advocate, it is reasonable to conclude that the proposed facility will, among other things, increase generation available to MidAmerican's ratepayers and Iowa consumers of the other Joint Owners, ease transmission constraints, create temporary and permanent jobs, and increase the local tax base such that it is consistent with Iowa's energy and economic development policies.

2. It is reasonable to expect that MidAmerican will comply with any and all provisions of a certificate authorizing construction, operation, and maintenance of the proposed facility.

3. It is reasonable to conclude the proposed facility will have minimal land use and environmental consequences, considering available technology and the economics of available alternatives.

4. It is reasonable to conclude that if final pre-construction permits are issued, the proposed facility will satisfy air quality and wastewater standards and have minimal environmental and land use consequences.

## **V. CONCLUSIONS OF LAW**

1. The Utilities Board has jurisdiction of the parties and the subject matter of this proceeding pursuant to the provisions of Iowa Code chapter 476A (Supp. 2001).

2. MidAmerican Energy Company, on behalf of itself and the other Joint Owners, subject to the issuance of final pre-construction permits, has met the three statutory criteria contained in Iowa Code § 476A.6.

## **VII. ORDERING CLAUSES**

### **IT IS THEREFORE ORDERED:**

1. Pursuant to Iowa Code chapter 476A (Supp. 2001), MidAmerican Energy Company's application for a certificate to construct and operate a generating unit is granted, subject to final pre-construction permits being issued and subject to

the conditions contained in Consumer Advocate's November 15, 2002, filing. A certificate will be issued once MidAmerican notifies the Board that final pre-construction permits have been issued. This order is the final decision of the Utilities Board in Docket No. GCU-02-1.

2. The Utilities Board retains jurisdiction of the subject matter in this docket to the extent provided in Iowa Code chapter 476A.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 23<sup>rd</sup> day of January, 2003.